IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4562 of 2003
Date of Decision: August 28, 2006

DAV Senior Secondary School and another .....Petitioners

versus

Arya Samaj, Shahbad Markanda and others .....Respondents

Present:- Shri M.S. Jain, Senior Advocate, with
Shri Adarsh Jain, Advocate for the petitioners

Shri Arun Jain, Advocate, for respondents No.1 and 2

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order passed by the learned Additional District Judge, Kurukshetra, on 11.09.2003 whereby the application of defendants No.1 and 2, petitioners herein, for revocation of leave granted to plaintiff-respondents No.1 to 3 to file a suit under section 92 of the Code of Civil Procedure, 1908 (hereinafter to be referred as "the Act") was dismissed.

On 28.11.1927, D.A.V. High School, Shahbad Markanda, was registered with the Registrar of Firms and Societies under the provisions of the Societies Registration Act, 1860. Subsequently, petitioner No.2 has been registered as a Society under the Societies Registration Act, 1860, vide certification of registration dated 27.06.1996.

The plaintiff-respondents No.1 to 3 have filed the present suit under section 92 of the Code for directing the defendants to furnish the

accounts of defendants No.1 and 2 and for settling a scheme for the administration of the institutions i.e., defendants No.1 and 2 and for declaring that the Managing Committee presently managing the affairs of defendants No.1 and 2 are not managing the affairs of the society in accordance with the constitution of the society. The plaintiffs further sought a restraint order against the defendants in respect of alienation of any property of the society.

The learned trial Court vide order dated 13.03.2002 granted permission to the plaintiffs to institute the suit under section 92 of the Code. On notice being received, the petitioners herein moved an application for revocation of the leave granted to the plaintiffs to institute the present suit. The learned trial Court vide order dated 11.09.2003 declined the application.

It has been found that the fact that the defendant is described as a society is immaterial as the petitioners are managing the affairs of two educational institutions which are of charitable character i.e., to subserve public interest of imparting education to children without any discrimination of caste, colour, creed, age etc. Therefore, by applying the principle to purpose, content and substance of structural and functional profile of such body, it was held that the defendant-petitioner is a trust of public character performing religious or charitable functions. Still further, it has been found that there is no personal interest or purpose of the plaintiffs but there is common interest for public good. In respect of the controversy on merits, it was found that the land appurtenant to the institute has been agreed to be sold for a price of Rs.1,54,000/- whereas the market value of the property was Rs.1,20,00,000/-. The agreement with the intending

purchaser was cancelled on payment ; of Rs.2,00,000/- as damages. Subsequently, the property was sought to be sold in public auction and in the said auction the highest bid was Rs.58,00,000/- though the property is not less than Rs.1,20,00,000/-. Thus, it is claimed that the body managing the two educational institutions is out to harm the body and public interest by selling the properties at throwaway prize to favour their kith and kin. In view of the said findings, the learned trial Court declined to revoke the leave granted to the plaintiffs.

Learned counsel for the petitioners has vehemently argued that the plaintiffs have not made out a case for institution of the suit under section 92 of the Code inasmuch as there is no allegation that the petitioner is a trust carrying out any charitable or religious function. Still further, there is no allegation of specific interest in the petitioners which may entitle the plaintiffs to seek intervention of the Court. It has been pointed out that by mistake the agreement was referred to in the sum of Rs.1,54,000/- though it was in the sum of Rs.40 lacs and the earnest money received was Rs.4 lacs. Later on, the said agreement was annulled and the property was sold in public auction by giving wide publicity and, therefore, the action of sale cannot be made subject matter of the controversy. It is also pointed out that the petitioners were granted affiliation by the Central Board of Secondary Education in order to establish another institute and for the said purpose the sale of the property was necessitated so as to construct the school building. Learned counsel for the petitioners has referred to **Murti Vaishnu Mata Alias Durga Mata vs. Vaishnu Dutt, 1997(2) PLR 370, Ram Parkash vs. Dayal Chand and others, 1985 Revenue Law Reporter 275 and Dharam Pal and others vs. Raghhpal (deceased) and others, 1990(2)**

Revenue Law Reporter 114. Reference is also made to **Pragdasji Guru Bhagwandasji vs. Ishwarlalbhai Narsibhai and others, AIR 1952 SC 143 and Chairman Madappa vs. M.N. Mahanthadevaru and others, AIR 1966 SC 878.**

However, in my opinion, none of the judgments referred to above is helpful to the petitioners. In **Vaishnu Dutt's case (supra),** this Court found that to invoke the provisions of Section 92 three conditions have to be specified, namely, (i) the trust is created for public purposes of a charitable or religious nature; (ii) there was a breach of breach of trust or a direction of Court is necessitated in the administration of such a trust; and (iii) the relief claimed is one or other of the reliefs enumerated therein. Admittedly, the society was registered in the year 1927 for running of a school. The school is meant for students of all castes, creed and colour. Therefore, the school is performing the duties of a public trust and of a charitable nature. Consequently, the first condition is satisfied. In respect of the second condition, there is allegation that the land of the Trust or society has been put to sale causing substantial loss to the society. Whether such allegation is correct or not is subject matter of evidence which can be decided only after an opportunity is given to the parties to lead evidence. At this stage, it is not open to the Court to delve deep into the facts to return a finding that the sale by the Trust is bona fide. Since the allegations are required to be examined, the plea whether the action of the Trust is justified or not has to be examined and appropriately gone into by the Court after evidence is recorded. However, at this stage, I do not find any ground for interference in the order passed by the learned trial Court declining to revoke the grant of leave to the plaintiffs to file suit under section 92 of the

Code.

Consequently, I do not find any patent illegality or material irregularity in the order passed by the trial Court on 11.09.2003 warranting interference by this Court in exercise of its revisional jurisdiction under Article 227 of the Constitution.

Dismissed.

August 28, 2006 (HEMANT GUPTA)
ks JUDGE